

CA20N
XLII
-1995-
C161

Government
Publication

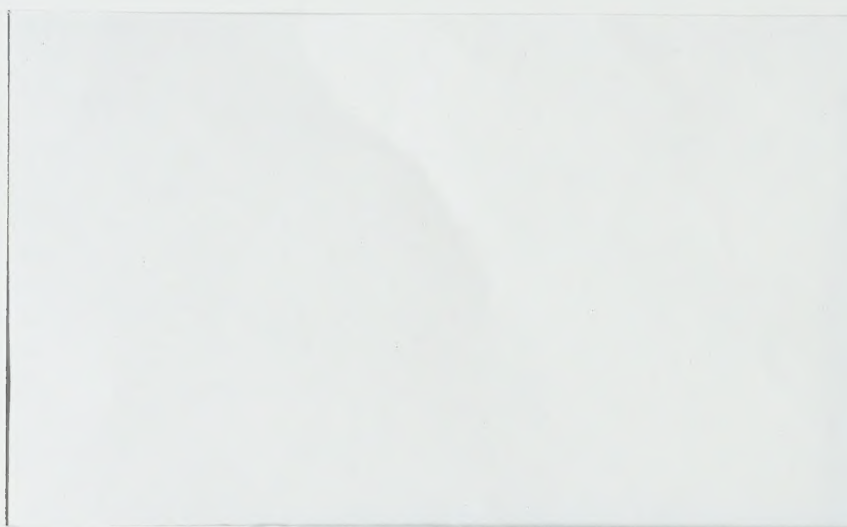
THE OFFICES AND COMMISSIONS
OF THE LEGISLATIVE ASSEMBLY

Current Issue Paper 161



**ONTARIO LEGISLATIVE LIBRARY
BIBLIOTHÈQUE DE L'ASSEMBLÉE
LÉGISLATIVE DE L'ONTARIO**

12-12-12



Ontario
Legislative
Library



Bibliothèque de
l'Assemblée législative
de l'Ontario

Legislative Research Service
Room 2520, Whitney Block
99 Wellesley Street West
Toronto, Ontario M7A 1A9

(416) 325-3675
(416) 325-3637
(416) 325-3696 Fax

Service de recherches
Bureau 2520, édifice Whitney
99, rue Wellesley ouest
Toronto (Ontario) M7A 1A9

(416) 325-3675
(416) 325-3637
téléc. : (416) 325-3696

ISSN 0835-0299

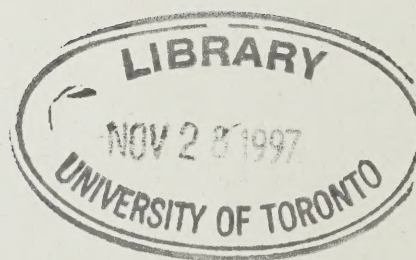
THE OFFICES AND COMMISSIONS
OF THE LEGISLATIVE ASSEMBLY

Current Issue Paper 161

Prepared by:

Andrew McNaught
Research Officer
Legislative Research Service


June 1995



The Legislative Research Service is a branch of the Ontario Legislative Library which provides confidential non-partisan research analysis to Members of all parties of the Legislative Assembly and to legislative committees.

Contents

INTRODUCTION	1
THE ROLE OF THE OFFICES OF THE ASSEMBLY	2
The Office of the Assembly	2
Background	2
Structure and Operation	2
The Board of Internal Economy	3
Office of the Chief Election Officer	4
Office of the Ombudsman	5
Office of the Provincial Auditor	5
Commission on Conflict of Interest	6
Commission on Election Finances	7
The Information and Privacy Commissioner	8
The Environmental Commissioner	9
CURRENT ISSUES	11
The Application of Provincial and Municipal Laws to the Legislative Building and Precincts	11
Application of Freedom of Information Laws to the Legislative Assembly	13
Term of Office	14
Accountability	15
Applicability of the Charter to the Legislature	16
NOTES	18



Digitized by the Internet Archive
in 2022 with funding from
University of Toronto

<https://archive.org/details/31761115501306>

INTRODUCTION

There are currently eight offices and commissions (hereafter "offices") within the Legislative Assembly of Ontario. These are the Office of the Assembly, the Office of the Chief Election Officer, the Office of the Ombudsman, the Office of the Provincial Auditor, the Commission on Conflict of Interest, the Commission on Election Finances, the Information and Privacy Commissioner, and the Environmental Commissioner.¹

The Office of the Assembly is, in effect, the civil service of the Legislative Assembly. Its purpose is to provide impartial support services to Members of the Assembly to assist them in the performance of their parliamentary duties. The remaining offices were designed to protect certain public interests. For example, the Provincial Auditor promotes fiscal accountability in government operations.

It is broadly acknowledged that these offices have to be independent of government to fulfil their functions. Accordingly, they are accountable to the Legislature, rather than to a government minister.

However, because these offices are considered to be neither a part of government nor a part of the private sector, some questions have arisen about the nature of their relationship with the Legislature, and the applicability of certain laws to their operations. For example, the Ombudsman has expressed concern in recent years over what she perceives to be interference in the operations of her office by the Legislature's Standing Committee on the Ombudsman. Within the Office of the Assembly there exists uncertainty about whether the independence of that office means that it is exempt from certain provincial and municipal laws. Freedom of information advocates argue that the current exemption of the Ontario Legislature from provincial freedom of information legislation runs contrary to the principles of such legislation.

This paper describes the general role and operations of the independent offices of the Assembly. It also describes how the individuals in charge of each office are appointed, their term of office, and their specific duties. The paper concludes with a discussion of some current issues connected with these offices.

THE ROLE OF THE OFFICES OF THE ASSEMBLY

The Office of the Assembly

Background

The Office of the Assembly, the administrative branch of the Ontario Legislature, was created in 1974. The physical and monetary requirements of the Legislature had previously been determined by the Ministry of Government Services, while Management Board of Cabinet reviewed and approved the Assembly's estimates. The Cabinet made all policy decisions regarding the use of funds appropriated by the Assembly for legislative objectives.

The Office of the Assembly was created in response to the recommendations of the Ontario Commission on the Legislature, which had been established in 1972 to review the operation and effectiveness of the Legislature. In its Second Report, released in December 1973, the Commission made a number of recommendations aimed at enhancing the independence of the Legislature from the Government and modernizing its administration.²

The main recommendations of the Commission were implemented by way of amendments to the *Legislative Assembly Act* in 1974. A 1978 Order in Council and a 1988 Memorandum of Understanding (formalized in 1990 by Order in Council) between the Speaker of the House and the Minister of Government Services confirmed the formal independence of the Legislature from the Government.³

Under the terms of the Memorandum of Understanding, the Government recognized the authority of the Speaker over the Legislative Precinct (defined as the Legislative Building and other offices in the Queen's Park vicinity).

Structure and Operation

According to the current wording of section 76 of the *Legislative Assembly Act*, the Office of the Assembly consists of the Speaker (who is elected by the Assembly), the Deputy Speaker, the Clerk of the Legislative Assembly, the First Clerk Assistant, the Sergeant-at-Arms and the Director of Administration.* The Speaker, as the Chief

* The offices of the Director of Administration and the First Clerk Assistant no longer exist, and two new offices, the Executive Director of Assembly Services and the Controller, have been created. These changes have not been reflected in amendments to the *Legislative Assembly Act*.

Administrative Officer of the Legislature, is the head of the Office of the Assembly and is responsible for its administration. The Clerk is the senior permanent officer of the Legislature and has the rank and status of a Deputy Minister.

The Office of the Assembly provides professional and administrative services to the Members of the Legislative Assembly to assist them in the performance of their duties as legislators and as representatives of their constituents. The estimated budget of the Office of the Assembly for 1994-95 was \$124,589,600. The Office currently employs 415 persons.

The Clerk of the Legislative Assembly is available to give advice on the law, practices and privileges of the Assembly. Clerk Assistants and Clerks of the committees provide support for legislative committees. Research and information services are provided to Members and Standing and Select Committees through the Legislative Library.

Official transcripts of the debates of the Assembly and its committees are provided by the Hansard Reporting Service. The Journals Branch compiles, maintains and publishes the official records of the House, including the minutes of the House (*Votes and Proceedings* and *Journals of the House*), the *Orders and Notices Paper*, containing all the business currently before the House, and the *Daily Business Paper*, which notes the business before the House on a particular day. The Broadcast and Recording Service is responsible for the operation of the Ontario Legislative Television system, while the Interpretation and Translation Service provides, among other services, simultaneous translation during House and committee proceedings.

The Controller is the Secretary to the Board of Internal Economy (described below) and is responsible for the administrative and financial functions of the Assembly. Assembly Services is responsible for building maintenance, inter-parliamentary and public relations, food services and other Members' services.

The Speaker is responsible for establishing security guidelines for the Legislative Building and the Legislative Precinct. Security is enforced by the Sergeant-at-Arms.

The Board of Internal Economy

The Board of Internal Economy, also established in 1974 in accordance with the recommendations of the Ontario Commission on

the Legislature, is responsible for the financial management of the Assembly. The Board, which is chaired by the Speaker, is composed of the Speaker and six Commissioners. Three Commissioners are appointed by the Lieutenant Governor in Council from among the members of the Cabinet, while each party caucus in the Assembly appoints one Commissioner.

The main powers and duties of the Board are set out in section 90 of the *Legislative Assembly Act*. These include

- ▶ approving the organization and staffing of the Office of the Assembly;
- ▶ reviewing estimates and expenditures of the Office of the Assembly, including a budget to fund Members' constituency offices and support staff, and determining allowances for party caucuses;
- ▶ approving and reviewing administrative policies and procedures of the Office of the Assembly;
- ▶ advising upon all matters related to the management, administration, accounting and collection and disbursement of money associated with the budget of the Office of the Assembly;
- ▶ advising upon the retention and disposal of records; and
- ▶ advising upon and giving direction in relation to any other matter related to the functioning of the Office of the Assembly.

In addition, the Board reviews and approves the financial estimates of the independent offices (described below) which report to the Legislature.

Office of the Chief Election Officer

The Chief Election Officer (CEO) is appointed under the *Election Act* by the Lieutenant Governor in Council on the address of the Assembly. The CEO is appointed as an officer of the Assembly. The Act is silent as to the term of office for the CEO.

The CEO is responsible for the administration of the *Election Act*. This means that the CEO is responsible for conducting all provincial elections and by-elections in Ontario, and for the establishment of policies and procedures for their conduct. Specific duties of the CEO include

- ▶ reviewing and modifying election rules and provisions;
- ▶ directing the returning officers in each electoral district in the Province, and coordinating the appointment, training and payment of all election officials and arranging for the provision of equipment and supplies for all polling places during an election;

- ▶ providing information to the general public and responding to enquiries on electoral rules and procedures; and
- ▶ compiling statistical information on each provincial election.

The CEO is not required to report annually to the Assembly, but is required to submit estimates to the Board of Internal Economy each year.

Office of the Ombudsman

The Office of the Ombudsman was established in 1975, when the *Ombudsman Act* was proclaimed into force. The mandate of the Ombudsman is to investigate and resolve complaints made by members of the public about decisions made by officials of Ontario governmental organizations, including ministries, agencies, boards and commissions.

The Ombudsman has broad powers to investigate actions, decisions, procedures and practices of Ontario government officials and is authorized to recommend that a governmental organization change a decision, procedure, regulation or practice. Where a recommendation is rejected, the Ombudsman may refer the matter to the Premier and then to the Legislature through the Standing Committee on the Ombudsman.

Since the role of the Ombudsman is to investigate government, ensuring independence from the government is essential. Accordingly, the Ombudsman is an officer of the Legislature appointed by the Lieutenant Governor in Council on the address of the Assembly.⁴ The Ombudsman is appointed for a term of 10 years and may be reappointed for further terms. He or she may be removed at any time for cause by the Lieutenant Governor in Council on the address of the Assembly.

The Ombudsman is required to report annually to the Speaker on the affairs of the Office.

Office of the Provincial Auditor

The Office of the Provincial Auditor originated with the creation of the Audit Branch in the Department of Treasury in 1869. Since that time, the original audit legislation has been substantially revised to enhance the independence and powers of the Office.

Today, the Office of the Auditor is governed by the *Audit Act*. The main function of the Auditor is to promote accountability and value-for-money in government operations by reporting to the Legislature on the government's management of public funds. Specifically, the Auditor conducts audits of ministries, agencies of the Crown, Crown-controlled corporations, agencies that receive transfer payments from the government, and the Province's financial statements.

The Provincial Auditor is an officer of the Assembly, appointed by the Lieutenant Governor in Council on the address of the Assembly, after consultation with the Chair of the Standing Committee on Public Accounts. The Auditor serves until he or she reaches the age of 65, and can be reappointed for further terms of one year up to the age of 75. The Auditor is removable at any time for cause by the Lieutenant Governor in Council on the address of the Assembly.

The Auditor reports annually to the Speaker. The report must contain a number of items specified in the Act, including an indication of whether all information required for an audit was provided to the Auditor; an examination of the Assets and Liabilities, Consolidated Revenue Fund and Revenue and Expenditures as reported in the Public Accounts; and an opinion as to whether these statements accurately reflect the financial position of the Province.

Commission on Conflict of Interest

The Commission on Conflict of Interest was established in 1988 with the coming in to force of the *Members' Conflict of Interest Act, 1988*⁵. The Act provides for the appointment of a Conflict of Interest Commissioner by the Lieutenant Governor in Council on the address of the Assembly. The Commissioner is an officer of the Assembly and is appointed for a term of five years and may be reappointed for further terms. The Commissioner may be removed at any time for cause by the Lieutenant Governor in Council on the address of the Assembly.

The purpose of the legislation is to enhance public confidence in the integrity of government by establishing standards of personal conduct for Members. The role of the Conflict of Interest Commissioner is to ensure that Members of the Assembly and the Cabinet comply with these standards.

The specific duties of the Commissioner include

- ▶ identifying areas of possible conflict of interest;

- ▶ providing advice to prevent the development of a conflict of interest or resolving a conflict once it arises; and
- ▶ investigating complaints made under the Act.

The Act requires Members, within 60 days of being elected, to file a Private Disclosure Statement containing information about their income, assets, financial interests and liabilities. After reviewing and discussing the statement with the Member, the Commissioner prepares a Public Disclosure Statement summarizing the information. This statement is filed with the Clerk's office and is available for examination by members of the public.

If a Member seeks the advice of the Commissioner regarding compliance with the Act, the Commissioner is authorized to make enquiries and to provide the Member with a written opinion or recommendation.

A Member, the Legislative Assembly (by resolution), or the Lieutenant Governor in Council may lodge a complaint with the Commissioner regarding the compliance of a Member with the Act. The Commissioner will then conduct an inquiry. If the request for an opinion was made by a Member or by the Legislative Assembly, the Commissioner must report his or her opinion and recommendations to the Speaker, who must then table the report in the Assembly. If the request was made by the Lieutenant Governor in Council, the Commissioner reports directly to Cabinet.

The Act requires the Commissioner to report annually to the Speaker.

Commission on Election Finances

The Commission on Election Finances administers the *Election Finances Act*, which regulates the financing of political activities in Ontario. The Act provides for the registration of Ontario's political parties, constituency riding associations, candidates in by-elections and provincial elections, and leadership contestants. During an election campaign the Commission monitors the amount of campaign expenses and political contributions to registered parties, constituency associations and candidates in order to ensure compliance with limits imposed under the Act. In addition, the Commission is required under the *Legislative Assembly Act* to annually review Members' indemnities and allowances and to make any recommendations it considers necessary.

The Commission is also required, within 60 days following a general election campaign, to make recommendations to the Speaker with respect to

- ▶ changes in limits on contributions to registered constituency associations, candidates or political parties;
- ▶ changes in limits on campaign expenses which may be incurred during a campaign by candidates or political parties;
- ▶ changes in levels of public funding of candidates or political parties;
- ▶ changes in public funding of auditor's fees charged to constituency associations, candidates, political parties and leadership contestants; and
- ▶ any other changes in monetary limits it considers appropriate.

The Commission is currently comprised of nine Commissioners, including

- ▶ two persons nominated by each political party in the Assembly that is represented by four or more Members and that nominated candidates in at least 50% of the electoral districts in the most recent general election (Currently, this means each of the three parties has the right to nominate two individuals, for a total of six representatives);
- ▶ one representative nominated by the Law Society of Upper Canada;
- ▶ the Chief Election Officer; and
- ▶ the Chair of the Commission, who is appointed by the Lieutenant Governor in Council.

The Chair of the Commission is appointed for a term of five years and may be reappointed for one additional term. The Commission is required to report annually to the Speaker.

The Information and Privacy Commissioner

The *Freedom of Information and Protection of Privacy Act, 1987*, which came into force on January 1, 1988, was Ontario's first freedom of information legislation. The Information and Privacy Commissioner oversees the Act.

The legislation has two main purposes: ensuring the public's right of access to information held by provincial government organizations, and protecting the individual's right to personal privacy with respect to personal information held by provincial organizations.

In 1989, the *Municipal Freedom of Information and Protection of Privacy Act, 1989* extended these principles to 3,000 local government bodies in the Province. The Commissioner also oversees this Act.

One of the Commissioner's most important duties is to receive appeals from members of the public who are not satisfied with a government decision about a request for information (such as general government records or personal information relating to the requester) and to review the government's decision. The Commissioner is authorized to investigate, mediate, and conduct inquiries with respect to the issues raised by an appeal, and to make binding orders for the release of records held by institutions.

In addition, the Commissioner is responsible for ensuring compliance with the standards set out in the legislation for the collection, storage, release and disposal of personal information. The Commissioner is authorized to order an institution to cease a collection practice, or to destroy records containing personal information.

The Commissioner also provides advice on proposed legislation or government programs that might have implications for the protection of personal privacy; conducts programs to educate the public about the role of the Commissioner; and is authorized to conduct research on any matter relating to the goals of the legislation.

In keeping with the Commissioner's role of overseeing government compliance with freedom of information legislation, the Commissioner is an officer of the legislature appointed by the Lieutenant Governor in Council on the address of the Assembly. The Commissioner serves for a period of five years and may be reappointed for further terms. The Commissioner can be removed at any time for cause by the Lieutenant Governor in Council on the address of the Assembly.

The legislation requires the Commissioner to report annually to the Speaker. The report must provide a comprehensive assessment of the effectiveness of Ontario's freedom of information legislation, and must include a summary of the nature and outcome of appeals made to the Commissioner, an assessment of the extent to which government institutions are complying with the legislation, and the Commissioner's recommendations with respect to the practices of particular institutions and with respect to proposed amendments to the legislation.

The Environmental Commissioner

The most recent addition to the list of officers of the Assembly is the Environmental Commissioner. The first Commissioner took office when the *Environmental Bill of Rights Act, 1993* was proclaimed into force on February 15, 1994.

The purposes of the Act are to protect, conserve and restore the integrity of the environment, to provide "sustainability" of the environment, and to protect the right to a healthful environment. The Act establishes the following:

- ▶ A set of minimum levels of public participation that must be met before the Government can make decisions on certain kinds of environmentally significant proposals for policies, legislation, and regulations. This provision includes the creation of an electronic environmental registry designed to provide a means by which notice of proposals and decisions that might affect the environment can be given to the public.
- ▶ A right for Ontario residents to apply for a review of Government policies, legislation and regulations when they consider it necessary to protect the environment.
- ▶ A right for Ontario residents to apply for an investigation of an alleged violation of environmental laws.
- ▶ An expanded right to sue for Ontario residents who believe that there has been a contravention of environmental laws that will cause significant harm to a public resource of Ontario.
- ▶ Protection for employees who report violations of environmental laws by their employers, or who exercise their rights under the Act.

The main functions of the Environmental Commissioner are to

- ▶ review the implementation of the Act and compliance with the requirements of the Act by ministries;
- ▶ provide guidance to ministries on how to comply with the requirements of the Act;
- ▶ review the use of the environmental registry;
- ▶ review the exercise of discretion by ministers under the Act; and
- ▶ review the recourse to the rights established under the Act.

The Commissioner reports annually to the Assembly. The report must include a statement on whether the ministries have cooperated with the Commissioner when he or she has made requests for information; a list of proposals for policies, legislation or regulations; a summary of the information gathered when performing the duties listed above; and any other information prescribed or which the Commissioner considers appropriate.

The Commissioner is also authorized to make special reports to the Speaker on urgent matters arising under the Act, and can be asked by the Assembly to perform special assignments.

The Environmental Commissioner is an officer of the Assembly appointed by the Lieutenant Governor in Council on the address of the Assembly. The Commissioner is appointed for a term of five years and may be reappointed for further terms. The Commissioner may be removed by the Lieutenant Governor in Council for cause on the address of the Assembly.

CURRENT ISSUES

The Application of Provincial and Municipal Laws to the Legislative Building and Precincts

As noted at the beginning of this paper, the Office of the Assembly was established on the recommendation of the Ontario Commission on the Legislature with a view to reasserting the independence of the Legislature from government. Although it seems clear that the Commission's recommendations were aimed at establishing administrative independence, does that independence mean that the Legislature has special status in law?

An on-going issue for the Speaker, as the person with jurisdiction over the Legislative Precinct, as well as for other officials within the Office of the Assembly who are responsible for providing various services for the Assembly, has been: to what extent do provincial and municipal laws apply to the Legislative Precinct?

For example, in recent years the Speaker and other Assembly officials have had to deal with such questions as whether the Legislative Building must comply with the provisions of the *Building Code Act*, whether the Assembly must obtain permits under the *Liquor Licensing Act* whenever liquor is going to be served within the Legislative Precinct, and whether municipal parking by-laws can be enforced on the grounds of the Legislative Precinct.

This issue arose most recently in the context of provincial and municipal smoking-in-the-workplace laws. A number of complaints were made by employees to the Occupational Health and Safety Committee for the Office of the Assembly about other employees who persisted in smoking in offices, doorways and other areas of the Legislative Precinct. Both provincial law and City of Toronto by-laws

prohibit smoking in the workplace.⁶ The City by-law also prohibits smoking in certain public and semi-public areas within the City. A City of Toronto official, who entered the Legislative Precinct following one complaint, was asked to leave by Assembly officials who took the position that the City had no jurisdiction at Queen's Park.

The argument could be made that, because the Legislature is independent of government, and is neither the Crown nor the private sector, provincial and municipal laws do not apply to, or cannot be enforced on, the Legislative Precinct, unless such laws specifically state that they apply to the Assembly. However, it should be noted that laws which specifically provide that they apply to the Assembly (e.g., the *Social Contract Act*) are by nature laws of limited application; that is, they are intended to apply only to certain sectors of the economy, or only to certain individuals or other entities. Accordingly, they must designate the particular sectors, individuals or other entities to which they apply. This does not mean that other statutes which generally apply to the Province, but which do not specifically refer to the Assembly, do not also apply to the Assembly.

Moreover, if it were true that a statute applied to the Legislative Assembly only if it specifically stated that it applied, then provincial laws such as the *Occupational Health and Safety Act*, the *Employment Standards Act* and the *Health Protection and Promotion Act* would not be applicable to the Legislature, since these statutes do not refer to the Legislative Assembly. It would be difficult to argue that the Province, by omitting a specific reference to the Legislative Assembly in these statutes, intended to exclude employees of the Assembly from the protection provided by such basic employment laws.

Another argument that might be made in support of the view that certain civil and criminal laws do not apply to the Legislature is that the law of parliamentary privilege acts to exclude their application. For example, it might be argued that the privilege of legislatures to control their internal proceedings free from outside interference could be invoked to exclude the application of liquor licensing laws, no-smoking laws and other laws, since the application or enforcement of those laws in the Legislative Precinct could interfere with the internal proceedings of the Legislature.

On the other hand, the leading authorities on parliamentary traditions and procedures argue that parliamentary privilege is founded on necessity; that is, privilege acts to exclude legislatures from civil and criminal laws only when exemption is necessary to allow Members to perform their duties as Members.⁷ If necessity is the basis of privilege,

then a strong argument could be made that privilege could not be properly invoked to exclude the application to the Legislature of such laws as liquor licensing and no-smoking statutes, since it would be difficult to demonstrate that Members would be hindered in the performance of their duties if such laws were enforced in the Legislative Precinct.⁸

Application of Freedom of Information Laws to the Legislative Assembly

Most provincial government institutions are subject to the *Freedom of Information and Protection of Privacy Act* (FIPPA or "the Act"). Institutions covered by FIPPA include all government ministries, as well as agencies, boards and commissions designated as "institutions" under the Act. The Legislative Assembly of Ontario, including the Office of the Assembly, the Board of Internal Economy and the independent offices that report to the Assembly, are not designated as institutions under FIPPA.

Presumably, one of the reasons for exempting the Legislature from FIPPA is that it is independent of government. However, some advocates of access to government information argue that, in an era when the public is demanding greater accountability from government, the distinction between the Legislature and government is artificial. They believe that, at least for the purposes of access to information, the Legislature is a part of government and that its operations should be subject to Provincial freedom of information legislation. Submissions received by the Standing Committee on the Legislative Assembly during its review of FIPPA in 1991 recommended that the Legislature be designated as an "institution" under FIPPA.⁹

In its report to the Legislature, the Committee noted that the Commission on Freedom of Information and Individual Privacy (the Williams Commission), appointed in 1977, and on whose recommendations FIPPA was based, had recommended that information and privacy legislation should apply to the administrative and support services of the Legislature.¹⁰

The Committee recognized that extending coverage to all of the operations of the Assembly could significantly change the way in which the Legislature functions. For example, providing access to the records of House leaders' meetings could compromise the ability of leaders to reach agreement, since it might inhibit their discussions. In addition, Members might be concerned about the public having access

to records in their own offices, including any confidential work done on their behalf by Assembly staff.

The Committee concluded that it would be inappropriate to extend coverage of FIPPA to all operations of the Assembly, but agreed with the original conclusions of the Williams Commission that the Act should apply to the administrative and support services of the Legislative Assembly.¹¹ This recommendation reflected the intent behind other recommendations in the Committee's report that the public should have access to information held by institutions which receive public money.

There has been no official government response to the Committee's report.

Term of Office

The Chair of the Commission on Election Finances, the Conflict of Interest Commissioner, the Information and Privacy Commissioner and the Environmental Commissioner are all appointed for terms of five years. The Chair of the Commission on Election Finances may be reappointed for one additional term, while the Conflict of Interest Commissioner, the Information and Privacy Commissioner and the Environmental Commissioner may all be reappointed for further terms.

The Ombudsman is appointed for a term of 10 years and may be reappointed for further terms. The Ombudsman must retire at age 65, unless he or she has not served five years, in which case he or she must retire after serving five years.

The Provincial Auditor serves until age 65 and may be reappointed for further terms of one year until age 75. The *Election Act* is silent as to the term of office of the Chief Election Officer.

Two committees of the Legislature recently expressed concern about lengthy appointments for officers of the Assembly. The Standing Committee on the Legislative Assembly rejected a proposal to extend the term of office for the Information and Privacy Commissioner from five years to seven, and the Standing Committee on the Ombudsman recommended that the term of office for the Ombudsman be reduced to six years from 10. The committees reasoned that lengthy terms can reduce the accountability of such officers, and can pose a problem for a government where an officer of the Assembly does not meet

expectations, since it is politically difficult to remove an officer, even if there is sufficient cause.¹²

On the other hand, if the term of an officer is shorter than the term of one government (i.e., under five years), the official could be open to, or be perceived to be open to, pressure from the government that appointed him or her, and this could affect the independence of the office. Another consideration is that the term of office must be of sufficient length to attract persons of high calibre to the position.

While there are good reasons for appointing independent officers of the Legislature for terms of at least five years, the rationale for terms of 10 years or more, as in the case of the Ombudsman and Provincial Auditor, or an indefinite term, as in the case of the Chief Election Officer, is not clear.

Accountability

The Legislature has attempted to make the officers of the Assembly accountable to it in a number of ways. For example, six of the offices are required to report annually to the Speaker on the affairs of each office, and the Speaker must table these reports in the Assembly. In the case of the Office of the Assembly, the Speaker is required to make an annual report to the Board of Internal Economy regarding the budget of the Office. (The Chief Election Officer is only required to report to the Assembly after an election.)

In addition, the Board of Internal Economy reviews and approves the estimates of each office. These can also be reviewed by the Legislature's Standing Committee on Estimates, if the Committee selects the estimates of a particular office for review.

Four of the eight offices (the Environmental Commissioner, the Ombudsman, the Information and Privacy Commissioner, and the Commission on Election Finances) are audited annually by the Provincial Auditor. All accounts respecting fees and expenses paid by the Chief Election Officer to election officials during an election are audited by the Provincial Auditor. There are no statutory provisions for the auditing of the Office of the Conflict of Interest Commissioner.

The Auditor's office is audited annually by independent accountants. These audits are submitted to the Board of Internal Economy and tabled in the Legislature.

In recent years, questions have been raised about the effectiveness of the accountability measures described above, at least with respect to the Office of the Ombudsman. The Standing Committee on the Ombudsman, in its Nineteenth Report (1991),¹³ was of the opinion that the system for reviewing the estimates of the Office of the Ombudsman was inadequate. The Committee argued that, since review of the estimates of the offices of the Assembly by the Standing Committee on Estimates is not automatic each year, and since the Ombudsman Committee has specialized knowledge of the operations of the Ombudsman's office, the estimates of that office should be reviewed by the Ombudsman Committee, rather than the Standing Committee on Estimates.¹⁴ The Committee also recommended that the Auditor conduct a value-for-money audit of the Ombudsman's office, since one has not been conducted since 1984.¹⁵

The Committee's report concluded with recommendations designed to improve its ability to investigate complaints by the public about the handling of cases by the Ombudsman, and made recommendations for the resolution of a number of individual cases where the Ombudsman's findings had been rejected by governmental organizations.¹⁶

The Ombudsman responded to the Committee's Nineteenth Report in a Special Report to the Legislature.¹⁷ In her Report, the Ombudsman argued that, as her office is "not a part of government," it would be inappropriate for the Standing Committee on the Ombudsman to oversee its estimates, or for the Provincial Auditor to conduct a value-for-money audit of her office in the same way such audits are conducted of government ministries and agencies. Further, the Ombudsman recommended that the Committee discontinue its role of receiving complaints from the public about the Ombudsman's handling of cases, since, in the Ombudsman's view, this practice places the Committee in the role of a court of appeal, a role the Committee has always rejected.

In short, the Ombudsman argued that the existing methods for ensuring the accountability of her office to the Legislature are adequate, and that the Committee's recommendations, if implemented, would constitute an infringement upon her independence as an officer of the Legislature.

Applicability of the Charter to the Legislature

A recent decision of the Supreme Court of Canada dealt with the question of whether the *Canadian Charter of Rights and Freedoms*

applies to the members of Canadian legislatures when exercising their parliamentary privileges.

In *New Brunswick Broadcasting Co. v. Nova Scotia (Speaker of the House of Assembly)*,¹⁸ the Canadian Broadcasting Corporation argued that section 2(b) of the *Charter*, which guarantees freedom of expression, including freedom of the press, permitted the CBC to film the proceedings of the Nova Scotia House of Assembly with the CBC's own cameras. The House of Assembly, exercising its parliamentary privilege to exclude strangers from the House, had prohibited the televising of its proceedings by outside television cameras. However, the Assembly had allowed its proceedings to be televised through an internal system approved and controlled by the House.

The Supreme Court held that, although the *Charter* could conceivably apply to actions taken by a legislature that impinge on individual freedoms where such actions fell outside the scope of parliamentary privilege, it does not apply to actions of the House that have traditionally been protected by privilege. The Court reasoned that the *Charter* does not apply to actions protected by privilege because the privileges enjoyed by Canadian legislatures are themselves part of the Constitution of Canada, and one part of the Constitution (e.g., the *Charter*) cannot override another part.

Applying this principle to the particular case before it, the Court found that the exclusion of cameras was necessary to maintain decorum in the House and that this was a matter that fell within the privilege of a legislature to exclude strangers from the House. Accordingly, the Court held that the *Charter* did not apply, and that the Nova Scotia House of Assembly had the right to prohibit the televising of its proceedings by outside television cameras.

NOTES

¹ Recent amendments to the *Public Service Act*, which have not been proclaimed into force, would establish another officer of the Assembly. These amendments would establish new whistleblowers' protection provisions in the *Public Service Act*, and would provide for the appointment of a Counsel to advise employees in the Public Service about their rights under the new provisions. The Counsel would be an officer of the Assembly, appointed by the Lieutenant Governor in Council. See the *Public Service and Labour Relations Statute Law Amendment Act, 1993*, S.O. 1993, c. 38, s. 63(6).

² Ontario Commission on the Legislature (Dalton Camp, Chairman), *Second Report* (Toronto: The Commission, 1973).

³ O.C. 3195/78 and O.C. 957/90.

⁴ In practice, "on the address of the Assembly" means that the government of the day selects a candidate and proposes their appointment in the House. A custom has developed whereby the government's selection is discussed in advance with the two opposition leaders to ensure that the appointment is acceptable to all parties.

⁵ Bill 209, which received Royal Assent on December 9, 1994, but which was not proclaimed into force prior to the June 1995 provincial election, would replace the *Members' Conflict of Interest Act* with the *Members' Integrity Act, 1994*. The Conflict of Interest Commissioner would become the Integrity Commissioner under the new legislation.

⁶ See the *Smoking in the Workplace Act*, R.S.O. 1990, c. S.13, and City of Toronto Municipal By-law 1994-0750.

⁷ See *Erskine May's treatise on the Law, Privileges, Proceedings and Usage of Parliament*, 21st ed., (London: Butterworths, 1989), p. 69, and Joseph Maingot, *Parliamentary Privilege in Canada* (Toronto: Butterworths, 1982), pp. 12, 71 and 146.

⁸ In the case of *R. v. Graham-Campbell*, [1935] 1 K.B. 594, decided by a court in the United Kingdom in 1935, the sale of liquor without a licence in the precincts of the U.K. House of Commons by servants of a legislative committee was held to fall within the scope of the internal affairs of the House. Such action, therefore, was ruled to be protected by privilege so that no court had jurisdiction to interfere. However, the decision of the court in *Graham-Campbell* appears to be inconsistent with the principle of necessity, as enunciated by the authorities on parliamentary practice, and so it is quite possible that a court presented with the same facts today would reach a different conclusion. In this respect, the recent decision of the Supreme Court of Canada in *New Brunswick Broadcasting Co. v. Nova Scotia (Speaker of the House of Assembly)*, [1993] 1 S.C.R. 319, confirmed that the privileges of Canada's legislative bodies are founded on necessity.

⁹ Ontario, Legislative Assembly, Standing Committee on the Legislative Assembly, *Review of the Freedom of Information and Protection of Privacy Act, 1987* (Toronto: The Committee, 1991), p. 7.

¹⁰ Ibid., pp. 7-8.

¹¹ Ibid., p. 8.

¹² Ibid., pp. 96-97, and the Standing Committee on the Ombudsman, *Review of the Office of the Ombudsman* (Toronto: The Committee, 1993), pp. 62-64.

¹³ Ontario, Legislative Assembly, Standing Committee on the Ombudsman, *Nineteenth Report 1991* (Toronto: The Committee, 1991). Under the *Ombudsman Act*, the Legislature is given authority to make rules for the guidance of the Ombudsman in the exercise of his or her duties under the Act. This rule-making authority has been delegated by the Legislature to the Standing Committee on the Ombudsman. The Committee also reviews "recommendation denied" cases, cases where the Ombudsman has recommended that a government organization take certain action and that recommendation is rejected. Following its review, the Committee reports to the Assembly with its recommendations on how these cases should be addressed. The Committee also receives complaints from members of the public who are not satisfied with the way in which the Ombudsman has handled a case.

¹⁴ Ibid., pp. 24-26.

¹⁵ Ibid., p. 27.

¹⁶ Ibid., pp. 39-40.

¹⁷ Ontario, Office of the Ombudsman, *A Special Report to the Legislature* (Toronto: The Office, 1992).

¹⁸ *New Brunswick Broadcasting Co. v. Nova Scotia (Speaker of the House of Assembly)*, [1993] 1 S.C.R. 319.

3 1761 11550130 6

